



THE ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable H. L. Roberson
County Attorney
Winkler County
Kernit, Texas

Dear Sir:

Opinion No. 0-4225

Re: When justices of the peace act as registrars for the Board of Vital Statistics and are compensated on an annual salary basis, said justices of the peace are authorized to collect and retain fees for acting as registrars for the Board of Vital Statistics, in addition to their annual salaries.

Your letter of November 19, 1941, requesting the opinion of this department on the question stated therein, reads in part as follows:

"Under Article 3912e, Sec. (c), Vernon's Statutes, we find the following:

"In counties where the Commissioners' Court determines to place the justices of the peace on a salary basis the justices of the peace shall receive in addition thereto all fees, commissions, or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex-Officio Notary Public.

"Opinion No. 0-419, Attorney General of Texas, we find the following:

"Where justices of the peace act as local registrars of vital statistics, and are

compensated for the fiscal year on the basis of fees earned by them in the performance of their official duties, such fees collected as registrars of vital statistics under Rule 53a, Article 4477, as amended by Acts of 1929, 41st Leg., 1st C. 3. Chapter 4, are to be reported and included in the maximum compensation allowed such officers.

"In your opinion C-419, you are referring to Justices that are compensated on a fee basis. In our case the Justices of the Peace are compensated on the maximum salary basis of \$1,400.00 per year.

"Referring back to Article 3912e, Section (c), Vernon's, it is the opinion of this office that the Justice can retain his fees collected as registrars of vital statistics, over and above his \$1,400.00 per year salary. What is the opinion of your department."

Winkler County has a population of 6,168 inhabitants according to the 1940 Federal Census. You refer to Article 3912e, Section (c), Vernon's Annotated Civil Statutes. Apparently you have reference to paragraph (c) of Section 19 of Article 3912e, Vernon's Annotated Civil Statutes. This provision is only applicable to counties having a population in excess of 190,000 inhabitants according to the last preceding Federal Census. Therefore, this provision of the statute is not applicable to Winkler County as said county does not have a population in excess of 190,000 inhabitants.

Section 2 of Article 3912e, Vernon's Annotated Civil Statutes, is applicable to counties having a population of less than 20,000 inhabitants according to the last preceding Federal Census and reads in part as follows:

"The Commissioners' Court of each county in the State of Texas, at its first regular meeting in January of each calendar year, shall, by order made and entered in the minutes of said court, determine whether precinct officers of such county (except public weighers and registrars of vital statistics) shall be compensated on a salary basis as provided for in

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this Act, or whether they shall receive as their compensation, such fees of office as may be earned by them in the performance of the duties of their offices, and it shall be the duty of the county clerk of each county to forward to the Comptroller of Public Accounts of the State of Texas on or before the 31st day of January a certified copy of such order. . . ."

Section 2a of Article 3912a, supra, provides:

"In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, wherein the precinct officers are compensated on a salary basis under the provisions of this Act, such precinct officers shall receive, in addition to the salary fixed by the Commissioners Court, all fees, commissions, or payments for performing marriage ceremonies and for acting as registrar for the Board of Vital Statistics, and for acting as ex-officio notary public."

Section 15 of Article 3912a, supra, provides in part:

"The Commissioners' Court in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. . . ."

Section 17(a), Article 3912a, supra, reads in part as follows:

"The term 'Precinct Officers' as used in this Act means justices of the peace and constables.

". . . .

"(b) In counties where it shall have been determined that precinct officers shall be com-

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compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing August 24, 1935. . . ."

Justices of the peace are required to act as registrars for the Board of Vital Statistics, in certain instances, by Article 4477, Vernon's Annotated Civil Statutes, and amendments thereto.

In view of the foregoing statutes you are respectfully advised that it is the opinion of this department that where justices of the peace are compensated on an annual salary basis, such justices of the peace are authorized to collect and retain fees for acting as registrars for the Board of Vital Statistics, in addition to their annual salaries, which have been fixed by the Commissioners' Courts in compliance with the above mentioned statutes.

We are enclosing a copy of our opinion No. 0-419 and a copy of an opinion written by Honorable James N. Neff, Assistant Attorney General, addressed to Honorable Tom C. King, State Auditor, concerning the question discussed in opinion No. 0-419, for your information.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED DEC 3, 1941

Robert L. Williams
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ENCLOSURE

